

ENVISAGE TECHNOLOGY LIMITED

Revision 2203

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All quotations and accepted orders, invoices are subject to the following terms of trading of Envisage Technology Limited

1. Definitions

"the Company" means Envisage Technology Limited.

"Customer" means any company, person, firm or individual to whom the goods are sold or supplied by the company.

"Goods" means all goods, materials, articles, services or things supplied by the Company to the Customer.

2. Applicability of Conditions

All contracts for the sale or supply by the Company of Goods shall be subject to the terms and conditions contained herein and such other terms and conditions as the Company may stipulate or agree in writing which shall prevail over any inconsistent terms which may appear on the Customer's enquiry, order or other documents received by the Company from the Customer or which may be implied by law or trade, custom, practice or a course of dealing between the parties, all of which are hereby expressly excluded.

3. No variation of these conditions shall be effective unless made in writing and signed by an authorized employee of the Company.

4. The Company's estimates and quotations constitute invitations to treat and shall not be binding offers on the part of the Company unless specifically referred to as fixed for a specific duration.

5. The Company shall be entitled to sub-contract the performance of the whole or any part of the contract with the Customer without any prior notice to the Customer.

6. The Customer shall not be entitled to rely or to seek to rely upon any statement, warranty or representation made by an employee or agent of the Company to the extent that such representation is inconsistent with these Conditions.

7. Price

(a) All prices quoted by the Company are exclusive of value added tax which will be chargeable at the date of despatch of the Goods and of all other taxes of whatever nature that may be applicable to the Contract.

(b) Except where a written quotation has been given in accordance with Paragraph 4 above, Goods are sold at the prices ruling at the date upon which they are delivered to or to the order of the Customer.

(c) The Company's prices exclude handling and delivery.

(d) The Company's costs (including storage charges) due to the Customer's neglect or default or lack of instructions or refusal or failure to take delivery of the Goods during normal business hours or to special deliveries or part deliveries or any other variation of the original order made at the request of the Customer, shall be paid by the Customer in addition to the contract price.

(e) If the Customer's cheque payable to the Company is not met upon first presentation then without prejudice to its rights and remedies in such a case, the Customer shall pay to the Company the charges the Company incurs from their Bankers.

8. Cancellation by the Customer of any order shall only take place with the Company's written agreement and the following amount or amounts not exceeding in total the Contract price shall be payable in the event that the Company does so agree;

(a) storage charges in respect of the cancelled Goods until such time as the Goods are delivered to another Customer.

(b) an amount in respect of cancellation charges which have been imposed on the Company by suppliers of goods or services required for the Goods for the Customer.

(c) the total cost of any work carried out and/or materials, components or other items made or adapted to the Customer's specification.

(d) Returned goods are subject to a 10% restocking charge, all items must be in the original packaging, brand new, unopened and unmarked.

9. Payment

In the absence of any agreed credit facility or any written concession to the contrary by the Company from time to time (whether as to credit and/or discount) accounts are due and payable in full on receipt of the invoice in respect thereof except where Goods are supplied on a cash on delivery basis, and time for payment shall be of the essence.

10. (a) Where the Company has granted to the Customer a credit facility (30 days from date of invoice) the Company may withdraw or vary the same forthwith without giving any reason for so doing or incurring any liability to the Customer.

(b) If the Customer orders goods from the Company in excess of the Company's credit limit, the Company may require payment of the excess on demand and may refuse to deliver the goods until such payment has been received by the Company.

11. Without prejudice to any other rights or remedies which may be available to the Company, if the Customer fails to pay to the Company any amount on the due date;

(a) the Company shall have the right to cancel any contract made with the Customer and/or to suspend or continue delivery of Goods at the Company's option without prejudice to the Company's right to recover damages for any loss sustained by it. The Customer shall indemnify the Company against any costs charges or expenses arising as a result of such cancellation or suspension;

(b) the outstanding sum shall carry interest at the rate of 3% above Bank of England's base rate per annum for the time being from the due date to date of payment, compounded at three monthly rests;

(c) the whole of the balance of the price then outstanding shall become due and payable forthwith;

(d) the Customer shall on demand reimburse to the Company all fees and disbursements incurred by the Company in taking proceedings to recover any sums due and outstanding from the customer.

12. Retention of Title

Notwithstanding that the Customer obtains possession of the goods, property in Goods sold or supplied to the Customer will remain in the Company which reserves the right to dispose of them until such time as payment for such goods and payments due under all Contracts between the Company and the Customer is received in full by the Company and where payment has been made by cheque or other negotiable instrument, payment shall not be deemed to be received until the Company has received such amount in cash. Until that time or until the Customer sells such Goods, whichever is the earlier, the Customer will hold such Goods on trust for the Company and keep such Goods separate and identifiable from any other goods and will on the Company's demand and at the Customer's expense promptly return such Goods to the Company. If the Customer fails to do so the Company is irrevocably authorised by the Customer without notice to enter any premises where such Goods are stored for the purpose of collecting and removing them which shall include the dismantling of any machinery, product, item or equipment into which the Goods or any of them have been incorporated. The Customer shall be responsible for all costs and expenses of returning or removing any goods. The Company shall have no liability for any reasonably unavoidable damage to the Customer's property caused by any such collection or removal. If the Customer sells such Goods, the Customer will account to the Company for the proceeds of sale up to the amount outstanding in respect thereof and until such time will keep the same separate from all other monies of the Customer and hold the same on trust for the Company.

13. Delivery

(a) Delivery of goods by the Company does not include the provision of labour and equipment for unloading, which the Customer shall be liable to provide, at the Customer's own cost and risk.

(b) When the Company delivers Goods, the Company's liability for doing so shall be limited to delivering them as near to the place where the Goods are required as a safe hard road permits. If in any particular case, the Company should agree to relax this condition the relaxation shall be deemed to have been given in consideration of an indemnity from the Customer against all losses and expenses which the Company may incur or pay as a result of such relaxation.

(c) Without prejudice to sub-paragraphs (a) and (b) above, all Goods supplied by the Company shall be at the Customer's risk from the time of delivery.

14. The Company will replace free of charge Goods damaged or lost in transit provided that in the event of:

(a) damaged delivery or shortage, such damage or shortage has been noted on the delivery note/carriers note signed by or on behalf of the Customer; or

(b) non-delivery in whole, the Company is advised in writing within 14 clear days of the notified date of despatch.

15. The Company will use reasonable commercial endeavour's to deliver the Goods in accordance with any dates or periods specified for delivery or performance but such dates or periods are deemed to be for general information only. Any failure by the Company to meet a specified date or period of time shall not amount to breach or repudiation of the contract and the Company shall not be liable for any loss or damage arising from such a failure.

16. The Company is entitled to deliver part of the Goods ordered or to deliver by instalments and to invoice for each such part delivery or instalment, where Goods contracted for are deliverable by instalments. Each delivery shall be deemed to be subject of a separate enforceable contract.

17. **Warranty and Exclusion of Liability**

- (a) The Company will at its own cost and at the Company's sole option either replace (or repair if possible) or refund the price of any Goods which are defective by reason of not being of merchantable quality or failing to meet the description applied to the Goods in the Manufacturer's published product literature (which shall specifically exclude any prediction as to performance and suitability for a particular purpose supplied by the Manufacturer, such predictions being supplied on the basis that they cannot reasonably be warranted) provided that the Customer has given written notice of the alleged defect to the Company within 14 days from the date of delivery of the Goods and the Customer will, if the Company so requests, return the allegedly defective Goods to the Company's premises at the Customer's cost and expense. All Goods supplied by the Company are covered by a Twelve Month return to base warranty, the date of this warranty is from the delivered date to the Customer.
- (b) The price quoted to the Customer is based upon the understanding that the Company's liability for the Goods shall be set out in sub-clause (a) above which shall be in lieu of any other liability or right or remedy on the part of the Customer whatsoever save for liability for death or personal injury resulting from negligence and for any damage to physical property resulting from negligence up to £10,000. Accordingly, all representation, warranties, guarantees and conditions express or implied, statutory or otherwise (other than as to title or as expressly provided in these terms) are hereby expressly excluded. In particular the Company is not liable to the Customer if the Goods are not fit for any particular purpose whether the Company has knowledge of that purpose or not as the Customer must carry out appropriate tests and cannot reasonably rely upon the Company's skill and judgement.
- (c) Without prejudice to the foregoing, the Company shall not be liable for consequential loss or damage howsoever caused, including (without limitation) loss of profit, time, goodwill, contracts, expenses or liability to third parties or other indirect losses or costs and whether arising directly or indirectly from the supply of Goods by the Company.
- (d) In the event of the Customer requesting site visits, a separate quotation will be provided to the Customer for this work and a Purchase Order must be sent from the Customer to the Company before any such site visit / work will be undertaken.

18. **Hazardous/Dangerous Goods/Materials**

The Customer is deemed to have acquainted itself, its servants and agents, with the nature of the Goods ordered from the Company and of any hazards involved. Furthermore they are deemed to have taken any precautions required under the Health and Safety at Work Enactment's or allied legislation or any regulations made thereunder. The Customer agrees to indemnify the Company in respect of any claims made against it for events occurring after delivery due to any failure or omission on its part to observe the aforementioned safeguards and requirements.

19. **Force Majeure**

The Company shall not be liable for any delay or failure in carrying out its obligations which is caused wholly or partly by reason of act of God, delay in transportation, labour disputes, fire, flood, war, accident, Government action, inability to obtain adequate labour, materials or energy or any other cause beyond the Company's control or that of its servants or agents.

20. **Drawings and Specifications etc.**

Illustrations, descriptions, advertisements, product literature and similar materials issued by the Company are for information only and no particulars therein shall be binding on the Company except as provided in Paragraph 17(a) hereof.

- 21. If the company notices an error or deficiency in any of the following items supplied by the Customer, it shall notify the Customer accordingly but, unless expressly so instructed in writing the Company shall be under no liability whatsoever to check the accuracy, originality or suitability of all descriptions, illustrations, particulars of weights and measures, performance and material data or details or specifications or other descriptive matter supplied to the Company by the Customer or of information record therein.
- 22. The customer shall refrain, either by itself or through any third party, any analysing or attempting to analyse the product including by way of disassembly, decompiling or reverse engineering any samples, prototypes, software or other tangible objects, in order to determine design composition or specification thereof.

23. **General**

The Customer shall not be entitled to assign this contract without the prior written consent of the Company.

- 23. No delay or omission of either party in exercising any right hereunder shall impair such right or be construed as a waiver thereof and any single or partial exercise of any such right shall not preclude the further exercise of any other right. If either party shall agree to waive any default that shall not act as a waiver of any other default whether or not similar or contemporaneous or on a future occasion.
- 24. If the Customer shall make default in or commit a breach of the contract or of any of his obligations to the Company or if any distress or execution shall be levied upon the Customer's property or assets, or if the Customer shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if the Customer is a limited company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction which in the opinion of the Company is not detrimental to the Company) or to appoint an Administrator shall be passed or presented, or if a receiver of such company's undertaking, property or assets or any part thereof shall be appointed, the Company shall have the right forthwith to determine any contract then subsisting and upon written notice of such determination being given to the Customer any subsisting contracts shall be deemed to have been determined and the Company shall be entitled to recover from the Customer all losses thereby arising.
- 25. These conditions and any contract between the Customer and the Company shall be governed by and construed according to English law. The Company and the Customer submit to the non-exclusive jurisdiction of the English Courts.
- 26. Confidential Information – The company wishes to ensure that the customer maintains the confidentiality of any of the companies confidential information that it may be privy to.